

brought before the Appeals Board upon appeal from a preliminary hearing order. K.S.A. 1998 Supp. 44-534a allows an administrative law judge to decide issues dealing with medical treatment and temporary total disability compensation from preliminary hearings. As it is within the Administrative Law Judge's jurisdiction to decide these issues, an appeal under K.S.A. 1998 Supp. 44-551 would not be proper at this time.

The Appeals Board will consider whether claimant suffered accidental injury arising out of and in the course of his employment. Claimant alleges accidental injury on November 6, 1998, when he struck himself in the left knee with a hammer while attempting to pry a form from concrete. Respondent contends, as there were no witnesses to the incident and as claimant failed to accurately complete his employment application, that claimant's "credibility" is suspect. Respondent would have the Appeals Board deny claimant benefits, arguing that claimant is not credible and, therefore, his description of the accident cannot be believed.

However, claimant's testimony is, essentially, uncontradicted. Claimant was working alone at the time of the accident. He immediately reported the matter to Jessie Decker, the foreman, who brought claimant to Jack Austin, the superintendent on the job. Claimant was then taken to the office where Pat Austin, Mr. Austin's wife and the person in charge of workers' compensation matters for respondent, referred claimant to Mercy Health Center in Manhattan, Kansas. Claimant was examined in the emergency room and later referred to Dr. Richard B. Baker for treatment. Dr. Baker saw claimant on November 9, 1998, and diagnosed degenerative changes consistent with previous ligamentous meniscectomy and ligament repair, and a contusion to the anteromedial tibia, with a probable fracture.

The Appeals Board acknowledges claimant omitted vital information on his employment application dealing with his preexisting left knee problems. Claimant acknowledged at preliminary hearing that he had prior knee injuries in 1981 and 1994, and underwent surgery in 1981 with Dr. Baker for a torn cartilage. But the Appeals Board finds, for preliminary hearing purposes, that the evidence is sufficient to support claimant's description of the accident. In addition, Dr. Baker's report, indicating claimant had a contusion and a possible fracture, supports claimant's description of the accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated January 20, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: Douglas G. Vinson, Junction City, KS
Kristine A. Purvis, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director